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DATUK BEH KIM LING & ANOR v. NEP HOLDINGS (MALAYSIA) BHD

HIGH COURT MALAYA, KUALA LUMPUR
LIZA CHAN SOW KENG J
[ORIGINATING SUMMONS NO: WA-24NCC-43-01-2022]
B 24 OCTOBER 2023

Abstract – *(i) Contempt is applicable not only to those who are bound by the court order, but other parties who assist in the disobedience of the court order. Actual interference with the administration of justice need not be shown because likelihood of interference is sufficient. The evidence, when considered in its totality, must also establish beyond reasonable doubt the guilt of the alleged contemnor; (ii) The law recognises that directors and officers are human agencies responsible for the conduct of the affairs of a company and are therefore liable for any breach of court order by the company.*

CIVIL PROCEDURE: *Contempt of court – Committal proceedings – Seeking order for committal against contemnors – Failing to ensure compliance of instruction order – Whether contemnors breached compliance with express terms in order – Whether contemnors interfered with administration of justice – Whether directors and officers responsible for conduct of affairs of company liable for any breach of court order – Whether charge of contempt against contemnors proved beyond reasonable doubt – Companies Act 2016, s. 245*

F The plaintiffs/applicants filed encl. 60 to seek an order for committal against: (i) the first alleged contemnor/defendant ('NEP') for interfering with the administration of justice, obstructing and/or defeating the course of justice; and (ii) the following officers of NEP for failing to ensure that the inspection order was complied with by NEP: (a) the second alleged contemnor, Lim Chang Huat ('LCH'), the president and a director responsible for the day-to-day management and business operations of NEP; (b) the third alleged contemnor, Lim Chee Kon ('LCK'); (c) the fourth alleged contemnor, Chow Chun Pooi ('CCP'); and (d) the fifth alleged contemnor, Kong Kian Huat ('KKH') ('alleged contemnors'). The plaintiffs filed this originating summons ('OS') to enforce their respective statutory and contractual right to accounting and other records ('accounting records') against NEP and its subsidiaries required to be kept pursuant to s. 245 of the Companies Act 2016 ('CA'). An inspection order was granted whereby it expressly required the defendant to, *inter alia*, (i) open its accounting records for inspection by the plaintiffs' auditor and/or by the auditor's colleagues within eight working days from the date of being served with the inspection order and the said inspection shall be carried out on working days between

9.30am and 5pm and shall continue for the next 30 working days thereafter; (ii) make available the accounting records for the auditor and/or his colleagues to make copies and/or take extracts; and (iii) supply the first plaintiff and/or the second plaintiff copies of the documents listed in Annexure B to the inspection order within the inspection period above. The auditor's colleagues commenced inspection on 1 July 2022 but was only allowed to do so from 2.55pm onwards when NEP let the audit team into its premises. The 30 days' working inspection commenced on 1 July 2022 and ended on 12 August 2022 ('30 working days inspection period'). Leave to commence committal proceedings was granted to the plaintiffs pursuant to O. 52 r. 3 of the Rules of Court 2012, premised on a breach of the inspection order. The plaintiffs submitted that the acts of contempt alleged to have been committed were, *inter alia*, that NEP had frustrated, stultified, breached and disobeyed the inspection order by: (i) failing to take adequate and continuing steps to ensure that the plaintiffs were supplied with copies of the documents listed in Annexure B to the inspection order; (ii) failing or refusing to produce or make available for inspection the documents requested *via* and as set out in the lists of documents attached in the auditors' colleagues' emails to the personal assistant of LCH; and (iii) omitting to furnish or provide for inspection any of the accounting records.

Held (finding alleged contemnors guilty of contempt of court):

(1) Contempt is applicable to not only those who are bound by the court order, but other parties who assist in the disobedience of the court order. Actual interference with the administration of justice need not be shown, likelihood of interference is sufficient. The facts of the case as a whole is to be considered to see whether there was an interference with the due administration or the course of justice. The evidence, when considered in its totality, must establish beyond reasonable doubt the guilt of the alleged contemnor. (paras 22 & 28)

(2) Annexure B to the inspection order expressly set out the various documents of which copies NEP was required to supply to the first plaintiff and/or the second plaintiff as ordered by para. 2. However, copies of the documents in the said Annexure B to be supplied to the auditor, his colleagues (given the undertaking) or to the plaintiffs' solicitors or the first plaintiff and/or the second plaintiff were not supplied by NEP to the auditor, his colleagues or the plaintiffs' solicitors to date. Providing the documents in Annexure B for inspection by the audit team was not compliance as para. 2 of the inspection order plainly required NEP to supply copies of the documents in Annexure B to the first plaintiff and/or the second plaintiff. This non-compliance was contumacious for in spite of the audit team's repeated requests that they required all the documents in Annexure B, both verbally as well

as in emails. It was incontrovertible and there was no shadow of a doubt that NEP had failed to comply and/or disobeyed the express term of para. 2 of the inspection order and was in contempt of court. (paras 31-37)

(3) There was nothing unclear or ambiguous whatsoever in respect of the two specific timeframes stipulated in para. 1 of the inspection order: (i) NEP was to open all of and the full set of the accounting records for inspection by the audit team at the time of the commencement of the inspection and for the next 30 working days inspection period; and (ii) the audit team had 30 working days' from the opening of the accounting records on 1 July 2022 to carry out the inspection. It was not for NEP to provide the documents in batches or on a piecemeal basis and/or in any manner or how the alleged contemnors wish. That NEP did not open its entire accounting records for inspection at the time of the commencement of the inspection was evident by the second and fifth alleged contemnors' own affidavits in reply. Whether the audit team was serious in carrying out the inspection and how long it would take to finish inspection were not reasons or excuses that should concern NEP, nor did they exculpate or justify its non-compliance of the inspection order. (paras 39-45)

(4) NEP was required by s. 245(3) of the CA to keep the accounting records for seven years. The accounting records particularised in Annexure B to the inspection order were for the period from 2016 to 2021, including debtor ledgers, creditor ledgers, sales invoices and supplier invoices, which were well within the aforesaid seven years' period. For records of the Hong Kong companies which could not be disputed to be the subsidiaries of NEP, NEP was required by s. 245(5) of the CA to keep in Malaysia the accounting and other records of its operations outside Malaysia. A failure to do so would also attract the penalty provided in s. 245(9) of the CA. NEP had sufficient time to comply as the inspection order was granted in the presence of NEP's former solicitors three weeks before the commencement of the inspection. The terms of the inspection order were agreed upon by the parties through their solicitors, which included the timeframe for NEP to open its entire accounting records and the timeframe for the audit team to carry out the inspection. (para 48)

(5) Even if NEP's claim was true that they had problems locating the documents, NEP had an available recourse to apply to the court to vary the order or for an extension of time as the inspection order granted parties liberty to apply; rather than for NEP and its officers to give excuses to defy and render the order useless, and that there would be an

'anarchy in the administration of justice.' Therefore, the plaintiffs had established beyond any reasonable doubt that the NEP had breached or refused to comply with the express terms of paras. 1 and 2 of the inspection order. (paras 49 & 50)

(6) LCH was the president and a director responsible for the day-to-day management and business operations of NEP whilst LCK and CCP were directors of NEP. KKH was, at all material times and still, the General Manager of NEP and was tasked by LKH to comply with the inspection order. They, as directors and officers responsible for the conduct of the affairs of the company, were liable for any breach of court order by the company. Contempt of court being a serious offence, just as with NEP, this court had anxiously and carefully considered the cause papers, examined the various affidavits and exhibits adduced before the court, and found that the evidence when considered in totality admitted only of one conclusion – beyond a reasonable doubt, the guilt of the alleged contemnors on the charge of the contempt in question had been established. The alleged contemnors had failed to offer some semblance of credible explanation on not obeying the inspection order to the letter. (paras 51, 52 & 59)

(7) The law recognises that directors and officers are the human agencies responsible for the conduct of the affairs of the company and therefore they are liable for any breach of court order by the company. The charge of contempt had been proved beyond a reasonable doubt against LCH, LCK, CCP and KKH (the second to fifth alleged contemnors) in their capacity as directors/officers of NEP for failing to ensure that the inspection order was complied with by NEP. Each of them together with NEP were found guilty of contempt of court. In the public interest on the necessity of ensuring that the administration of justice shall not be obstructed or interfered with, this court imposed the following sentence against the alleged contemnors, *inter alia,* (i) a fine of RM25,000 against each of the first to fifth contemnors to be paid individually; (ii) the fine shall be paid within seven days of sentencing and upon such failure, there shall be an imprisonment in default of two weeks for each of the second to fifth contemnors; and (iii) contemnors were to purge their contempt and comply with the inspection order. (paras 60, 61 & 72)

Case(s) referred to:

Bayu Gamitan Sdn Bhd v. Mah Siew Seng & Ors [2000] 1 LNS 266 HC ***(refd)***

BYD Auto Industry Co Ltd v. Amdac (M) Sdn Bhd [2017] 5 CLJ 371 HC ***(refd)***

Dato' Seri Yusof Dato' Biji Sura v. BTM Timber Industries Sdn Bhd & Ors [2009] 5 CLJ 412 CA ***(refd)***

Datuk Beh Kim Ling & Anor v. NEP Holdings (M) Bhd [2022] 1 LNS 1671 HC ***(refd)***

Datuk Hong Kim Sui v. Tiu Shi Kian & Anor [1987] 1 CLJ 438; [1987] CLJ (Rep) 1 PC ***(refd)***

Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd [2001] 4 CLJ 549 CA ***(refd)***
Juris Technologies Sdn Bhd & Anor v. Foo Tiang Sin & Ors [2019] 9 CLJ 617 HC ***(refd)***
Lee Lim Huat v. Yusuf Khan Ghows Khan & Anor [1997] 3 CLJ 197 CA ***(refd)***
MBf Holdings Bhd & Anor v. Houng Hai Kong & Ors [1994] 4 CLJ 1002 HC ***(refd)***
MediaCorp News Pte Ltd & Ors v. MediaBanc (Johor Bharu) Sdn Bhd & Ors; Lim Leong Wuoh & Ors (Proposed Contemnors) [2011] 5 CLJ 454 HC ***(refd)***
Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd [2002] 4 CLJ 401 FC ***(refd)***
Murray Hiebert v. Chandra Sri Ram [1999] 4 CLJ 65 CA ***(refd)***
Societe Jas Hennessy & Co & Anor v. Nguang Chan (M) Sdn Bhd [2005] 5 CLJ 515 HC ***(refd)***
Tan Sri Dato (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849 FC ***(refd)***
Teo Cheng Hua v. Ker Min Choo & Ors [2015] 7 CLJ 328 CA ***(refd)***
Teoh Seow Chiew & Ors v. Mega Palm Sdn Bhd & Anor [2021] 1 LNS 2400 HC ***(refd)***
Tiu Shi Kian & Anor v. Red Rose Restaurant Sdn Bhd [1984] 1 CLJ 325; [1984] 2 CLJ (Rep) 543 HC ***(refd)***
TO Thomas v. Asia Fishing Industry Pte Ltd [1977] 1 LNS 126 FC ***(refd)***
United Telephone Co v. Dale (1884) 25 ChD 778 ***(refd)***
Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal [1993] 3 CLJ 210 SC ***(refd)***
William Jacks & Co (M) Sdn Bhd v. Chemquip (M) Sdn Bhd & Anor [1994] 3 CLJ 125 HC ***(refd)***

Legislation referred to:
Companies Act 2016, s. 245(3), (5), (9)
Rules of Court 2012, O. 52 rr. 3(2), 4(3), O. 59 rr. 3(1), (2), 16(2)(a), (3)

For the plaintiffs - Sivaneindiren, Jayne Koe, Bong Lep Siong & Joycelyn Teoh; M/s Cheah Teh & Su
For the defendant - Sng Eee Kim & Hazman Ahmad; M/s Sulaiman & Taye

Reported by Suhainah Wahiduddin

JUDGMENT

Liza Chan Sow Keng J:

Introduction

[1] Enclosure ("encl.") 60 was filed by the plaintiffs ("interchangeably, the applicants") to seek an order for committal against:

(i) first alleged contemnor/defendant ("NEP") for interfering with the administration of justice, obstructing and/or defeating the course of justice; and

(ii) the following officers of NEP for failing to ensure that the inspection order is complied with by NEP:

(a) the second alleged contemnor/Lim Chang Huat ("LCH"), the president and a director responsible for the day-to-day management and business operations of NEP;

(b) the third alleged contemnor/Lim Chee Kon ("LCK"), a director of NEP;

(c) the fourth alleged contemnor/Chow Chun Pooi @ Chow Chan Leong ("CCP"), a director of NEP; and

(d) the fifth alleged contemnor/Kong Kian Huat ("KKH"), the General Manager (Finance & Accounts) of NEP.

(NEP, LCH, LCK, CCP and KKH when collectively referred to, will be referred to as "alleged contemnors").

[2] After having read the cause papers, considered the written as well as oral submissions by the parties, on 17 August 2023, I found the alleged contemnors guilty and had sentenced them. The contemnors have appealed against my decision. This judgment contains the full reasons for my decision.

Background

[3] The plaintiffs filed this originating summons ("OS") to enforce their respective statutory and contractual right to accounting and other records ("accounting records") against NEP and its subsidiaries required to be kept pursuant to s. 245 of the Companies Act 2016 ("CA 2016").

[4] The reasons for allowing the inspection order (encl. 28) made on 10 June 2022, the background leading to the filing of this OS, and the nature of the plaintiffs' grievances in the OS have been set out in my first grounds of judgment – see *Datuk Beh Kim Ling & Anor v. NEP Holdings (M) Bhd* [2022] 1 LNS 1671; [2023] 8 MLJ 81.

[5] The inspection order reads:

1) the accounting and other records ("Accounting Records") of the Defendant required to be kept pursuant to Section 245 of the Companies Act 2016 be:

a) open to inspection by Andrew Heng (NRIC No.: 750225-71-5051) [License No.: 02935/08/2022 J], an approved company auditor ("Auditor") and partner/director of Baker Tilly Monteiro Heng PLT (LLP0019411-LCA) ("Baker Tilly") of Baker Tilly Tower, Tower, 1, Avenue 5, Bangsar South, 59200 Kuala Lumpur, Federal Territory of Kuala Lumpur and acting for:

i) the 1st Plaintiff, a director of the Defendant; and/or

ii) the 2nd Plaintiff, who is entitled to the said Accounting Records under a Shareholders' Agreement dated 25/07/2016 and/or by the Auditor's colleagues from Baker Tilly within eight (8) working days from the date of being served with this Order and said inspection shall be carried out on working days between 9:30 a.m. and 5:00 p.m. and shall continue for the next thirty (30) working days thereafter;

A b) available for the Auditor and/or his colleagues from Baker Tilly to make copies of and/or take extracts from the Accounting Records upon the undertaking in writing given by the Auditor to the High Court that information acquired by him and/or his colleagues from Baker Tilly during the inspection shall not be disclosed by him and/or his colleagues from Baker Tilly except B to the 1st Plaintiff and/or the 2nd Plaintiff, as per Annexure A to this Order;

2) the Defendant, do within the inspection period defined in paragraph 1(a) above supply to the 1st Plaintiff and/or the 2nd Plaintiff a copy of the documents listed in Annexure B to this Order;

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3) the costs of this action in the sum of RM20,000.00 subject to allocator be paid by the Defendant to the Plaintiffs; and

4) liberty be given to apply.

[6] In crystal clear language, the inspection order expressly requires the D defendant to:

(i) open its accounting records for inspection by the plaintiffs' auditor and/or by the auditor's colleagues within eight working days from the date of being served with the inspection order and the said inspection shall be carried out on working days between 9.30am and 5pm and shall E continue for the next 30 working days thereafter;

(ii) make available the accounting records for the auditor and/or his colleagues to make copies and/or take extracts; and

(iii) supply to the first plaintiff and/or the second plaintiff copies of the F documents listed in Annexure B to the inspection order within the inspection period above.

[7] The terms of the inspection order were agreed upon and signed by parties through their solicitors marked as Annexure A in encl. 22 on 10 June 2022 before the inspection order was filed for the court's approval and G subsequently sealed.

[8] On 23 June 2022, NEP appealed against the grant of the inspection order to the Court of Appeal and applied to this court for a stay of the inspection order. The stay application was dismissed by this court on 1 July 2022.

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[9] The auditor and his colleagues were to commence inspection on 1 July 2022 at 2pm with an undertaking recorded before this court on the same day that the information and documents derived from the inspection will not be shared with third parties except to the plaintiffs' accounting and legal advisors until NEP's application for a stay is disposed of at the Court of I Appeal.

[10] NEP's subsequent stay application at the Court of Appeal was dismissed on 18 July 2022 with a similar undertaking recorded before the Court of Appeal, except that it was to be until the disposal of the appeal.

[11] The auditor's colleagues did commence inspection on 1 July 2022 but were only allowed to do so from 2.55pm onwards when NEP let the audit team into its premises. The 30 working days' inspection period commenced on 1 July 2022 and ended on 12 August 2022 ("30 working days' inspection period").

[12] Leave to commence committal proceedings was granted to the plaintiffs by this court on 13 December 2022 pursuant to O. 52 r. 3 of the Rules of Court 2012 ("ROC 2012").

[13] The committal application in encl. 60 made by the plaintiffs is premised on the breach of inspection order.

Service Of Cause Papers

[14] The court is satisfied that the inspection order and cause papers were served on all the alleged contemnors. In this regard, in *TO Thomas v. Asia Fishing Industry Pte Ltd* [1977] 1 LNS 126; [1977] 1 MLJ 151, the Federal Court had made clear that in the matter of contempt arising out of disobedience to an order of injunction (in this case, the inspection order), the test was to ask whether the alleged contemnor knew of such order. It is not necessary that he be served. The Federal Court had referred to the English case of *United Telephone Co v. Dale* (1884) 25 ChD 778, where Pearson J stated:

> In no case will the court not enforce obedience to its injunction by means of a committal to prison, simply upon the ground that the order has not been served, **when it appears beyond all doubt or dispute that the defendant is aware** that the injunction has been granted, and that it is the intention of the plaintiff to enforce it. (emphasis added)

[15] It is not disputed that LCH is the president and a director responsible for the day-to-day management and business operations of NEP.

[16] It is also not disputed that LCK and CCP are directors of NEP whilst KKH was at all material times and still is the General Manager (Finance & Accounts) of NEP.

[17] NEP, through LCH, LCK, CCP and KKH, have full knowledge of the terms of the inspection order before the commencement of the inspection as:

(i) the inspection order was personally served on NEP's registered address on 21 June 2022;

(ii) the inspection order was also served on NEP's former solicitors on 21 June 2022;

(iii) the inspection order was emailed to LCH, LCK and CCP at their respective email addresses on 21 June 2022;

(iv) the inspection order was personally served on LCK and CCP on 24 June 2022;

(v) LCH, LCK and CCP had on 22 June 2022 executed a letter on behalf of NEP to Messrs Sulaiman & Taye (NEP's current solicitors) instructing them to apply for a stay of the inspection order and to appeal against the inspection order; and

(vi) the inspection order was personally served on KKH on 21 June 2022.

[18] The cause papers at the leave stage up to the application for committal herein were also personally served on all the alleged contemnors as required by O. 52 r. 4(3) of the ROC 2012.

The Plaintiffs' Complaints

[19] In the plaintiffs' statement filed pursuant to O. 52 r. 3(2) of the ROC 2012, the acts of contempt alleged to have been committed are as contained in paras. 38, 39 and 39.1 to 31.9. The plaintiffs' complaints were:

(i) NEP, the first alleged contemnor has frustrated and/or stultified the inspection order and/or breached and/or disobeyed the inspection order:

(a) by failing to take adequate and continuing steps to ensure through its responsible officers and/or servants that the first plaintiff and/or the second plaintiff are supplied with copies of the documents listed in Annexure B to the inspection order within the 30 working days' inspection period; and

(b) by failing to take adequate and continuing steps to ensure through its responsible officers and/or servants that the full set of the accounting records required to be kept pursuant to s. 245 of the Companies Act 2016 open to inspection and/or to have copies made and/or extracts thereof taken by the auditor and/or his colleagues for a continuous period of 30 working days from 1 July 2022 between 9.30am and 5pm and acting for: (a) the first plaintiff, a director of the first alleged contemnor; and/or (b) the second plaintiff, who is entitled to the said accounting records under a shareholders' agreement dated 25 July 2016.

(ii) the first contemnor has also frustrated and/or stultified the inspection order and/or breached and or disobeyed the inspection order through the conduct of its officers and/or servants by deliberately being evasive and/or uncooperative and/or difficult and/or avoiding and/or delaying the auditor's colleagues in the carrying out of the inspection order and giving the auditor's colleagues the runaround through the following conduct and/or acts:

(a) by failing and/or refusing to produce and/or make available for inspection the documents requested *via* and as set out in the lists of documents attached in the auditor's colleagues' emails to one Dickson Lau (said to be the personal assistant to Lim Chang Huat, the second alleged contemnor) on 19 July 2022, 20 July 2022, 21 July 2022, 23 July 2022, 25 July 2022, 26 July 2022, 27 July 2022, 28 July 2022, 29 July 2022, 1 August 2022, 2 August 2022, 3 August 2022, 4 August 2022, 5 August 2022, 8 August 2022, 9 August 2022, 10 August 2022 and 13 August 2022;

The documents identified in the lists updated as at 19 July 2022, 20 July 2022, 21 July 2022, 23 July 2022, 25 July 2022, 26 July 2022, 27 July 2022, 28 July 2022, 29 July 2022, 1 August 2022, 2 August 2022, 3 August 2022, 4 August 2022, 5 August 2022, 8 August 2022, 9 August 2022, 10 August 2022 and 13 August 2022 respectively obtained from the auditor's colleagues are annexed to this statement collectively as Annexure "X" which are to be read as part of this statement;

(b) by failing and/or refusing and/or omitting to furnish, provide and/or make available for inspection any of the accounting records for inspection on 8 July 2022, 14 July 2022, 18 July 2022, 21 July 2022, 28 July 2022, 1 August 2022, 2 August 2022, 4 August 2022, 5 August 2022, 8 August 2022 and 9 August 2022 (amounting to 11 out of the 30 working days' inspection period);

(c) by furnishing 20 boxes of documents together with a stack of loose documents only on 11 August 2022 between 4.15pm to 5.15pm only for the auditor's colleagues' review in the first alleged contemnor's premises;

(d) by furnishing a further 81 boxes only on 12 August 2022 which is the very last day of the 30 working days' inspection period and in batches between 10am to 10.30am and 3.05pm to 4.45pm only for the auditor's colleagues' review in the first alleged contemnor's premises;

(e) by having the said Dickson Lau informing the auditor's colleagues on 1 July 2022 that he (Dickson Lau) was the only point of contact for the auditor's colleagues and would purportedly provide the auditor's colleagues with assistance throughout the 30 working days' inspection period;

(f) notwithstanding the matters in above para. 19.2.5, by causing and/or having the said Dickson Lau to be present for only four days, namely on 1 July 2022, 5 July 2022, 7 July 2022 and 14 July 2022 out of the 30 working days' inspection period;

(g) when contacted by the auditor's colleagues with queries and/or for the documents, the said Dickson Lau's reply each time was that he will check with the said KKH (*ie*, the fifth alleged contemnor) and get back to the auditor's colleagues but the said Dickson Lau failed, refused and/or neglected to get back to the auditor's colleagues;

(h) by causing the said KKH who is responsible for the finance and accounts of the first alleged contemnor to be present for only nine days, namely on 1 July 2022, 4 July 2022, 5 July 2022, 6 July 2022, 12 July 2022, 14 July 2022, 19 July 2022, 11 August 2022 and 12 August 2022 out of the 30 working days' inspection period; and

(i) when the auditor's colleagues followed up on the requested management accounts (which comprises trial balance, general ledgers, debtors ledgers, creditors ledgers, debtors aging and creditors aging report) with the said KKH on 12 July 2022, the said KKH informed the auditor's colleagues that the first alleged contemnor's accounting system was purportedly facing technical issues and that he was unable to provide the auditor's colleagues with the management accounts. As at the end of the 30 working days' inspection period, the first alleged contemnor did not provide the following for the auditor's colleagues' review:

(1) any of the documents forming the management accounts of the first alleged contemnor, Nature Environment Products (HK) Limited, NEP Holdings Hong Kong Limited, NEP International (HK) Limited, Arissto (HK) Limited, Arissto International Distribution Limited, Arissto (UK) Limited, Wilco Global Ltd and Shenzen Diamond Trading Co Ltd (China); and

(2) a complete set of the management accounts for the rest of the companies listed in Annexure B to the inspection order.

[20] The plaintiffs' case for contempt against each of the second to fifth alleged contemnors can be gleaned from paras. 41 to 48 of the statement.

The Law

[21] The law and the power to punish for contempt has been set out by the Federal Court in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849; [2012] 3 MLJ 458, where Arifin Zakaria CJ explained:

[20] In dealing with the applications to set aside the leave for committal proceedings, it is necessary for us to consider the law of contempt. A good starting point would be the definition of contempt of court itself. *Oswald's Contempt of Court* (3rd edn.) at p. 6 gives a general definition of contempt of court as follows:

> *To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants, or their witnesses during the litigation.*

[21] The jurisprudence for arming the court with the power to punish a contempt is best expounded by Brown J in *Re HE Kingdon v. SC Goho* [1948] MLJ 17 as follows:

> But *the root principle on which this inherent power to punish for contempt is founded,* the purpose for which it must be exercised, is not to vindicate the dignity of the individual judge or other judicial officer of a court or even of the court itself, but *to prevent an undue interference with the administration of justice in the public interest.*

[22] Hence, the power to punish a contempt is not derived merely from statute nor truly from common law but instead flows from the very concept of a court of law (see *Borrie & Lowe's The Law of Contempt* (3rd Ed), at p. 465; and *Master Jacob* (1970) 23 Current Legal Problems 23).

[23] *Article 126 of the Federal Constitution empowers the Federal Court, the Court of Appeal and the High Courts to punish any contempt of itself. This is repeated in s. 13 of the Court of Judicature Act 1964.* However since the RFC has no procedural provision on committal, therefore, by virtue of r. 3 of the RFC, the procedure under O. 52 of the RHC may be adopted. Thus, an applicant can bring contempt proceedings *via* O. 52 of the RHC without having to go through the Criminal Procedure Code or the Penal Code even if the relief sought is imprisonment (see *Chandra Sri Ram v. Murray Hiebert* [1997] 3 MLJ 240; *Arthur Lee Meng Kwang v. Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 and *Chung Onn v. Wee Tian Peng* [1996] 5 MLJ 521).

[24] Contempt of court has traditionally been classified as being either criminal or civil. In England, the general approach has been that a criminal contempt is an act which so threatens the administration of justice that requires punishment whereas by contrast, a civil contempt involves disobedience of a court order. *However, O. 52 of the RHC is inapplicable for contempt in criminal proceedings where the contempt is in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court (see O. 52 r. 1(2)(a)(ii) of the RHC). One thing is clear, be it civil or criminal contempt, the standard of proof required in either type is the same, which is beyond reasonable doubt.*

A [25] Be that as it may, judges found the traditional classification as highly unsatisfactory. For instance, Salmon LJ in *Jennison v. Baker* [1972] 1 All ER 997 observed it as 'unhelpful and almost meaningless classification'. Sir Donaldson MR stated the classification "tends to mislead rather than assist" (see *AG v. Newspaper Publishing Plc* [1987] 3 All ER 276 at p. 294).

B [26] Contempt has been reclassified either as *(1) a specific conduct of contempt for breach of a particular court order; or (2) a more general conduct for interfering with the due administration or the course of justice.* This classification is better explained in the words of Sir Donaldson MR in *Attorney-General v. Newspaper Publishing Plc*, (*supra*) at p. 362:

> C Of greater assistance is the reclassification as *(a) conduct which involves a breach, or assisting in the breach, of a court order; and (b) any other conduct which involves an interference with the due administration of justice,* either in a particular case or, more generally, as a continuing process, the first category being a special form of the latter, such inference being a characteristic common to all contempts per Lord D Diplock in *Attorney-General v. Leveller Magazine Ltd* [1979] AC 440 at 449.

[27] This reclassification was adopted by the Court of Appeal in *Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd* [2001] 4 CLJ 549.

[28] Hence, *the law of contempt is wide enough to cover not only those who are* E *bound by the court order, but other parties who assist the disobedience to the court order.* It was reported in *Attorney-General v. Times Newspapers Ltd* [1991] 2 All ER 398 that a person, who knowingly impeded or interfered with the administration of justice in an action between two other parties, was guilty of contempt of court notwithstanding that he was neither named in any order of the court nor had assisted a person against whom an order F was made. (emphasis added)

[22] As can be seen from the above judgment, contempt is applicable to not only those who are bound by the court order, but also to other parties who assist in the disobedience to the court order. Actual interference with the administration of justice need not be shown, likelihood of interference is G sufficient – see Court of Appeal cases of *Teo Cheng Hua v. Ker Min Choo & Ors* [2015] 7 CLJ 328; [2015] 5 MLJ 365 at para. 25 of the judgment; *Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd* [2001] 4 CLJ 549 at pp. 569 to 570. The facts of the case as a whole are to be considered to see whether there was an interference with the due administration or the course of justice, see H the Federal Court's decision in *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd* [2002] 4 CLJ 401 at p. 410; [2002] 4 MLJ 241.

Standard Of Proof

[23] It is settled law that contempt proceedings are criminal in nature I because they involve the liberty of the alleged contemnor and as such, have to be proven beyond a reasonable doubt. Arifin Zakaria CJ in *Tan Sri Dato (Dr) Rozali Ismail (supra)* went on to say:

[29] It is settled law that committal proceedings is criminal in nature since it involves the liberty of the alleged contemnor. Premised upon that, the law has provided procedural safeguards in committal proceeding which requires strict compliance. In this regard, Cross J in *Re B (JA) (An Infant)* [1965] Ch 1112 had this to say:

> Committal is a very serious matter. The courts must proceed very carefully before they make an order to commit to prison; and rules have been laid down to secure that the alleged contemnor knows clearly what is being alleged against him and has every opportunity to meet the allegations. For example, it is provided that there must be personal service of the motion on him even though he appears by solicitors, and that the notice of motion must set out the grounds on which he is said to be in contempt; further, he must be served as well as with the motion, with the affidavits which constitute the evidence in support of it.
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> It is clear that if safeguards such as these have not been observed in any particular case, then the process is defective even though in the particular case no harm may have been done. For example, if the notice has not been personally served the fact that the respondent knows all about it, and indeed attends the hearing of the motion, makes no difference. In the same way, as is shown by *Taylor v. Roe*, if the notice of motion does not give the grounds of the alleged contempt or the affidavits are not served at the same time as the notice of motion, that is a fatal defect, even though the defendants gets to know everything before the motion comes on, and indeed answers the affidavits.
>
> When, however, one passes away from safeguards which are laid down in the interests of the contemnor and comes to consider mere verbal deficiencies in the documents in question – cases where the documents do not comply strictly with the rules, but it is impossible that in any conceivable case the contemnor could be in any way prejudiced by the defects – then it seems to me that there is no reason why the courts should be any slower to waive such technical irregularities in a committal proceeding than they would in any other proceeding.

[30] In similar tone, Lord Denning MR in *McIlraith v. Grady* [1968] 1 QB 468 said at p 477:

> The second appeal is as to the committal order. Here we must remember the fundamental principle that no man's liberty is to be taken away unless every requirement of the law has been strictly complied with.

[31] Later, in *Re Bramblevale Ltd* [1970] 1 Ch 125, Lord Denning MR reaffirmed the same and had this to say:

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> A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time honoured phrase, it must be proved beyond reasonable doubt (see Lord Denning MR in at p 137).

[24] It is thus incumbent upon the plaintiffs to prove beyond a reasonable B doubt that the alleged contemnors have wilfully or deliberately disobeyed or disregarded the inspection order in encl. 28. In the case of *MediaCorp News Pte Ltd & Ors v. MediaBanc (Johor Bharu) Sdn Bhd & Ors; Lim Leong Wuoh & Ors (Proposed Contemnors)* [2011] 5 CLJ 454; [2010] 5 MLJ 562, Azahar Mohamed J (later) emphasised the same point and cited with approval C *TO Thomas* (*supra*):

> I should note at once that it is settled law that in order to sustain a conviction in contempt proceedings, the standard of proof required is one beyond a reasonable doubt. Therefore, it is incumbent upon the applicants to prove beyond a reasonable doubt that the person asked to be committed, namely the proposed contempt parties had willfully, D deliberately disobeying, or disregarding the order of the court. The authority to support this proposition is to be found in the judgment of Lee Hun Hoe CJ (Borneo) in *TO Thomas v. Asia Fishing Industry Pte Ltd* [1974] 1 LNS 163; [1977] 1 MLJ 151. There, His Lordship had this to say at p. 155 of the report:
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> E
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> > Willfully, disobeying an order of the court constituted contempt. This commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required to do by the process, order or decree of the court: *Miller v. Knox*. **The contempt must be willful. An order of court must have been contumaciously disregarded. It is no good if it is casual, accidental and unintentional:** *Fairclough & Sons v. Manchester Ship Canal Co (No 2).* (emphasis added)
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> F

[25] To succeed, the plaintiffs, as applicants, must prove:

(i) the terms of the order must be clear and unambiguous;

G (ii) the alleged contemnor(s) must have proper notice of the terms of the order; and

(iii) there must be clear proof that the terms of the order have been broken and the breach must be proven beyond a reasonable doubt.

H See: *Tiu Shi Kian & Anor v. Red Rose Restaurant Sdn Bhd* [1984] 1 CLJ 325; [1984] 2 CLJ (Rep) 543; [1984] 2 MLJ 313.

[26] A court order will not be enforced by committal if its terms are vague or ambiguous, the rule being analogous to that which governs the interpretation of penal statutes – *Dato' Seri Yusof Dato' Biji Sura v. BTM* I *Timber Industries Sdn Bhd & Ors* [2009] 5 CLJ 412; [2010] 1 MLJ 644.

[27] It is not necessary to prove *mens rea* in contempt proceedings: *Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd* [2001] 4 CLJ 549 at p. 569; *Murray Hiebert v. Chandra Sri Ram* [1999] 4 CLJ 65; [1999] 4 MLJ 321 at p. 336. The Federal Court in *TO Thomas* (*supra*) stated that intention is of no consequence in the matter of contempt by disobedience to a court order.

Findings

[28] I begin by referring to the Court of Appeal case of *Lee Lim Huat v. Yusuf Khan Ghows Khan & Anor* [1997] 3 CLJ 197; [1997] 2 MLJ 472 which held that the evidence, when considered in its totality, must establish beyond a reasonable doubt the guilt of the alleged contemnor.

[29] I now deal with the contempt alleged against each contemnor.

Firtst Alleged Contemnor

(i) Breach Of Para. 2 Of The Inspection Order

[30] As against the first alleged contemnor, NEP, for breach of para. 2 of the inspection order, it is useful to recall that para. 2 of the inspection order reads:

> 2) the Defendant, do within the inspection period defined in paragraph 1(a) above supply to the 1st Plaintiff and/or the 2nd Plaintiff a copy of the documents listed in Annexure B to this Order;

[31] Annexure B to the inspection order expressly set out the various documents of which copies NEP is required to supply to the first plaintiff and/or the second plaintiff as ordered by para. 2.

[32] However, copies of the documents in the said Annexure B to be supplied to the auditor, his colleagues (given the undertaking) or to the plaintiffs' solicitors or the first plaintiff and/or the second plaintiff were not supplied by NEP to the auditor, his colleagues or the plaintiffs' solicitors to date.

[33] The non-compliance of para. 2 of the inspection order was confirmed by Ashvin Mahendran in para. 11 of his affidavit (encl. 51), and at paras. 6 and 6.1 of Ashvin's second affidavit (encl. 67).

[34] The first, second and fifth alleged contemnors asserted that:

(i) the documents identified in Annexure B in the possession of NEP purportedly have been supplied to the audit team for inspection for the 30 working days' inspection period;

(ii) the audit team was never prevented from making photocopy or taking extract;

(iii) the audit team never objected to NEP providing only the original documents in Annexure B for inspection by the audit team in the working room;

(iv) the audit team never objected to or commented on the method of providing the documents and records;

(v) all documents and records provided to the audit team were original documents allegedly to be the normal practice for "inspection audit".

[35] In this court's judgment, these assertions by NEP are untenable. Providing the documents in Annexure B for inspection by the audit team is not compliance as para. 2 of the inspection order plainly requires NEP to supply COPIES of the documents in Annexure B to the first plaintiff and/or the second plaintiff.

[36] This non-compliance is contumacious for in spite of the audit team's repeated requests to Dickson Lau and KKH that they require all the documents in Annexure B both verbally as well as in emails to Dickson Lau starting from 19 July 2022 in which email each time, attached a list of the outstanding documents – see para. 12.1 and exh. "A3" of Ashvin's affidavit (encl. 51) and para. 15.5 of Ashvin's second affidavit (encl. 67).

[37] I am satisfied that on the evidence before the court, it is incontrovertible and there is no shadow of a doubt that NEP has failed to comply and/or disobeyed the express term of para. 2 of the inspection order and is in contempt of court.

(ii) Breach Of Para. 1 Of The Inspection Order

[38] Paragraph 1 of the inspection order requires NEP to open its accounting records for inspection by the auditor and/or his colleagues within eight working days from being served with the inspection order and the auditor and/or his colleagues has 30 working days thereof to carry out the inspection. It reads:

> 1) the accounting and other records ("Accounting Records") of the Defendant required to be kept pursuant to Section 245 of the Companies Act 2016 be:
>
> a) open to inspection by Andrew Heng (NRIC No.: 750225-71-5051) [License No.: 02935/08/2022 J], an approved company auditor ("Auditor") and partner/director of Baker Tilly Monteiro Heng PLT (LLP0019411-LCA) ("Baker Tilly") of Baker Tilly Tower, Tower, 1, Avenue 5, Bangsar South, 59200 Kuala Lumpur, Federal Territory of Kuala Lumpur and acting for:
>
> i) the 1st Plaintiff, a director of the Defendant; and/or
>
> ii) the 2nd Plaintiff, who is entitled to the said Accounting Records under a Shareholders' Agreement dated 25/07/2016 and/or by the Auditor's colleagues from Baker Tilly within eight (8) working days from the date of being served with this

Order and said inspection shall be carried out on working days between 9:30 a.m. and 5:00 p.m. and shall continue for the next thirty (30) working days thereafter;

b) available for the Auditor and/or his colleagues from Baker Tilly to make copies of and/or take extracts from the Accounting Records upon the undertaking in writing given by the Auditor to the High Court that information acquired by him and/or his colleagues from Baker Tilly during the inspection shall not be disclosed by him and/or his colleagues from Baker Tilly except to the 1st Plaintiff and/or the 2nd Plaintiff, as per Annexure A to this Order;

[39] Giving the words in para. 1 its ordinary and plain meaning:

(i) NEP was to open all of and the full set of the accounting records for inspection by the audit team at the time of the commencement of the inspection, *ie*, on 1 July 2022 and for the next 30 working days' inspection period; and

(ii) the audit team has 30 working days from the opening of the accounting records on 1 July 2022 to carry out the inspection.

[40] I am in agreement with the plaintiffs' learned counsel Mr Sivaneindiren's submission that there is nothing unclear or ambiguous whatsoever in respect of the two specific timeframes stipulated in para. 1 of the inspection order *ie*, one for NEP and one for the audit team.

[41] In short, para. 1 specifically requires NEP to open its entire accounting records at the time of the commencement of the inspection and the audit team has 30 working days therefrom to carry out the inspection.

[42] In paras. 12 and 12.1 to 12.8, Ashvin from the audit team in his affidavit in encl. 51 verified the statement and has set out that NEP has frustrated and/or stultified the inspection order through the conduct of its officers and/or servants:

(i) by failing and/or refusing to produce and/or make available for inspection the documents requested *via* and as set out in the lists of documents attached in the auditor's colleagues' emails to one Dickson Lau (said to be the personal assistant to LCH, the second alleged contemnor) on 19 July 2022, 20 July 2022, 21 July 2022, 23 July 2022, 25 July 2022, 26 July 2022, 27 July 2022, 28 July 2022, 29 July 2022, 1 August 2022, 2 August 2022, 3 August 2022, 4 August 2022, 5 August 2022, 8 August 2022, 9 August 2022, 10 August 2022 and 13 August 2022;

(ii) by failing and/or refusing and/or omitting to furnish, provide and/or make available for inspection any of the accounting records for inspection on 8 July 2022, 14 July 2022, 18 July 2022, 21 July 2022,

28 July 2022, 1 August 2022, 2 August 2022, 4 August 2022, 5 August 2022, 8 August 2022 and 9 August 2022 (amounting to 11 out of the 30 working days' inspection period);

(iii) by furnishing 20 boxes of documents together with a stack of loose documents only on 11 August 2022 between 4.15pm to 5.15pm only for the auditor's colleagues' review in NEP's premises;

(iv) by furnishing a further 81 boxes only on 12 August 2022, which is the very last day of the 30 working days' inspection period and in batches between 10am to 10.30am and 3.05pm to 4.45pm only for the auditor's colleagues' review in NEP's premises;

(v) by having the said Dickson Lau to inform the auditor's colleagues on 1 July 2022 that he (Dickson Lau) was the only point of contact for the auditor's colleagues and would purportedly provide the auditor's colleagues with assistance throughout the 30 working days' inspection period;

(vi) notwithstanding the paragraph above, by causing and/or having the said Dickson Lau to be present for only four days, namely on 1 July 2022, 5 July 2022, 7 July 2022 and 14 July 2022 out of the 30 working days' inspection period;

(vii) when contacted by the auditor's colleagues with queries and/or for the documents, the said Dickson Lau's reply each time was that he will check with the said KKH (*ie*, the fifth alleged contemnor) and get back to the auditor's colleagues but the said Dickson Lau failed, refused and/or neglected to get back to the auditor's colleagues;

(viii) by causing the said KKH who is responsible for the finance and accounts of NEP to be present for only nine days, namely on 1 July 2022, 4 July 2022, 5 July 2022, 6 July 2022, 12 July 2022, 14 July 2022, 19 July 2022, 11 August 2022 and 12 August 2022 out of the 30 working days' inspection period; and

(ix) when the auditor's colleagues followed up on the requested management accounts (which comprises trial balance, general ledgers, debtors ledgers, creditors ledgers, debtors aging and creditors aging report) with the said KKH on 12 July 2022, the said KKH informed the auditor's colleagues that NEP's accounting system was purportedly facing technical issues and that he was unable to provide the auditor's colleagues with the management accounts. As at the end of the 30 working days' inspection period, NEP did not provide the following for the auditor's colleagues' review:

(a) any of the documents forming the management accounts of NEP, Nature Environment Products (HK) Limited, NEP Holdings Hong Kong Limited, NEP International (HK) Limited, Arissto (HK) Limited, Arissto International Distribution Limited, Arissto (UK) Limited, Wilco Global Ltd and Shenzen Diamond Trading Co Ltd (China); and

(b) a complete set of the management accounts for the rest of the companies listed in Annexure B to the inspection order.

[43] In my opinion, para. 1 of the inspection order says what it says in crystalline terms. It is not for NEP to provide the documents in batches or on a piecemeal basis and/or in any manner or how the contemnors wish. That NEP did not open its entire accounting records for inspection at the time of the commencement of the inspection is evident by the second and fifth alleged contemnors own affidavits in reply ("AIR") *to wit*:

(i) paragraphs 11 and 12 of LCH's AIR (encl. 61);

(ii) paragraphs 11, 12 and 25 of KKH's AIR (encl. 63); and

(iii) paragraph 5a and 5b of KKH's AIR (encl. 68).

[44] To elaborate, the averments in para. 11 of LCH's and KKH's AIRs respectively to the effect that:

(i) that at the commencement of the inspection, KKH and Dickson Lau had informed the audit team that any request for further documents is to be made in writing to NEP's solicitors but there was no such request – para. 11 of LCH's AIR (encl. 61) and para. 11 of KKH's AIR (encl. 63);

(ii) that there were no documents furnished to the audit team on 8 July 2022, 14 July 2022, 18 July 2022, 21 July 2022, 1 August 2022, 4 August 2022, 5 August 2022, 8 August 2022 and 9 August 2022 because the audit team was unable to review/inspect the documents furnished on the previous days – para. 11 of LCH's AIR (encl. 61) and para. 11 of KKH's AIR (encl. 63);

(iii) that several times when KKH/Dickson Lau wished to take out the documents furnished to the audit team for several days, the audit team had requested them not to do so as the audit team had yet to complete the inspection of the documents – para 11 of KKH's AIR (encl. 63)

are unacceptable explanations as NEP was required under the inspection order to open its entire accounting records for inspection at the time of the commencement of the inspection.

[45] With utmost respect, whether the audit team was serious in carrying out the inspection; whether the audit team sent to carry out the inspection each day is too small and comprised junior auditors even though the

accounting records sought were for many years; and how long it will take to finish inspection are not reasons or excuses that should concern NEP, do not exculpate or justify its non-compliance of the inspection order.

[46] Based on a plain reading of the inspection order, in this context, I agree with the plaintiffs' counsel that the inspection order allows Andrew Heng and/or his colleagues to carry out the inspection for a period of 30 working days between 9.30am and 5pm. The inspection order does not stipulate any number of auditors and/or the size of the audit team to be present each day of the inspection period to carry out the inspection.

Purported Difficulties Advanced By Contemnors

[47] Purported difficulties in compliance were raised through LCH's and KKH's AIRs in encls. 61 and 63:

(i) that most of the accounting records requested by the audit team are old records and that the format of those accounting records was distorted when KKH tried to print them. This issue was only resolved with the assistance of the service provider in about a week and thereafter, those accounting records were purportedly provided to the audit team;

(ii) the accounting records of the Hong Kong companies were kept in the defendant's company in Hong Kong, and that KKH was unable to go to Hong Kong to compile those records as Hong Kong was undergoing restricted movement control at the material time;

(iii) the audit team had requested for debtor ledgers, creditor ledgers, sales invoices and supplier invoices comprises of hundred thousand of documents a month which run into million pages.

[48] I do not find these explanations to be acceptable for reasons correctly pointed out by plaintiffs' counsel:

(i) first and foremost, NEP is required by s. 245(3) of the CA 2016 to keep the accounting records for seven years;

(ii) the accounting records particularised in Annexure B to the inspection order are for the period from 2016 to 2021, including debtor ledgers, creditor ledgers, sales invoices and supplier invoices, which are well within the aforesaid seven years' period;

(iii) for records of those Hong Kong companies which cannot be disputed to be the subsidiaries of NEP, NEP is required by s. 245(5) of the CA to keep in Malaysia the accounting and other records of its operations outside Malaysia. A failure to do so would also attract the penalty provided in s. 245(9) of the CA;

(iv) on 9 June 2022, NEP, through KKH, affirmed an affidavit in encl. 21 stating that all the audited accounts up to the year 2020 are available except for NEP Holdings Hong Kong Limited, Wilco Global Ltd and Shenzhen Diamond Trading Co Ltd and that NEP was not able to pinpoint and/or fully ascertain the exact documents sought by the plaintiffs as the category of documents listed in Annexure B are allegedly too general and wide-ranging; NEP did not at all state it does not have the documents in its possession;

(v) NEP had sufficient time to comply as the inspection order was granted in the presence of NEP's former solicitors on 10 June 2022 (*ie*, approximately three weeks before the commencement of the inspection); the terms of the inspection order were agreed upon by parties through their solicitors, which includes the timeframe for NEP to open its entire accounting records and the timeframe for the audit team to carry out the inspection;

(vi) two notices dated 22 June 2022 and 24 June 2022 were also given to NEP's former solicitors that NEP is to supply copies of the documents in the said Annexure B – para. 18 of the statement (encl. 53) and para. 14.11 and exh. "B11" of AIS (encl. 49).

[49] In my considered opinion, even if NEP's claim was true that they had problems locating the documents, NEP had an available recourse to apply to the court to vary the order or for an extension of time as the inspection order in para. 4 granted parties liberty to apply; rather than for NEP and its officers to give excuses to defy and render the order useless, and there will be "anarchy in the administration of justice". It is, of course, pertinent to state that the time required to make available the accounting records was made by consent as earlier alluded to.

[50] The court is thus satisfied that the plaintiffs have established beyond any reasonable doubt that NEP has breached or refused to comply with the express terms of paras. 1 and 2 of the inspection order.

Contempt By LCH, LCK, CCP And KKH (The Second To Fifth Alleged Contemnors) Proven Beyond A Reasonable Doubt

[51] As alluded earlier, LCH is the president and a director responsible for the day-to-day management and business operations of NEP whilst LCK and CCP are directors of NEP. KKH was at all material times and still is the General Manager (Finance & Accounts) of NEP. He was tasked by LCH to comply with the inspection order.

[52] They as directors and officers responsible for the conduct of the affairs of the company are liable for any breach of court order by the company.

[53] LCH sought to explain he had instructed KKH to do the necessary to ensure compliance with the inspection order; and that he had instructed Dickson Lau to support KKH with regard to the enforcement of the inspection order. These explanations do not exempt him from compliance.

[54] The same goes for KKH – he was served with the order and named in the penal indorsement. His explanation that he (KKH), as an employee, has no authority to make any decision on behalf of NEP rings hollow as LCH averred that he, KKH, was instructed to comply by LCH.

[55] LCK posits that he is not involved in the management and day-to-day affairs and operations of NEP which LCH handles with the support of KKH and that LCH had instructed NEP's employees including KKH to comply with the inspection order does not assist him one whit and do not exonerate him.

[56] CCP stated that he is a non-executive director, that his position is an honorary position, that he is not involved in any operation of NEP and that he plays no role in NEP nor has any room and/or desk in NEP's office. I do not think it is open to CCP to advance such an argument, and I reject this explanation as unacceptable; further, each officer can be found to be jointly and/or severally liable for contempt. In this regard, the court's attention was drawn to the case of *William Jacks & Co (M) Sdn Bhd v. Chemquip (M) Sdn Bhd & Anor* [1994] 3 CLJ 125; [1994] 3 MLJ 40, where the court held that it is no answer in a case of contempt for directors to say that he or she is merely a nominee or sleeping director.

[57] In *MBf Holdings Bhd & Anor v. Houng Hai Kong & Ors* [1994] 4 CLJ 1002; [1995] 1 MLJ 135, at p. 1010 (CLJ); p. 144 (MLJ), Anuar J (later CJM) said:

> Contempt of court is a serious offence and the court must deal with the contemnor with equal seriousness. When someone openly disobeys the court order, he commits a breach. His conduct; is calculated to obstruct or had an intrinsic tendency to interfere with the course of justice and the due administration of law.
>
> … **The simple and only view is that an order must be obeyed, that those who wish to get rid of that order must do so by the proper course. So long as it exists, the order must be obeyed, and obeyed to the letter …**
>
> A contempt of court is basically an offence against the court and not against the judge personally and it is punishable because of the necessity of maintaining the dignity of the Court. (emphasis added)

[58] In *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal* [1993] 3 CLJ 210; [1993] 2 MLJ 217, the former Supreme Court reminded that the court orders must be treated with respect and require strict obedience until it is set aside or varied.

[59] Contempt of court being a serious offence, just as with NEP, I had anxiously and carefully considered the cause papers, examined the various affidavits and exhibits adduced before the court, and found the evidence, when considered in totality, admits only of one conclusion – beyond a reasonable doubt, the guilt of the contemnors on the charge of the contempt in question has been established. The alleged contemnors have failed to offer some semblance of credible explanation for not obeying the inspection order to the letter. In fact, their explanations indicate their impudence and disrespect to the administration of justice, which any court should not take lightly.

[60] The law recognises that directors and officers are the human agencies responsible for the conduct of the affairs of the company and therefore they are liable for any breach of the court order by the company. For mere illustrations:

(i) *Datuk Hong Kim Sui v. Tiu Shi Kian & Anor* [1987] 1 CLJ 438; [1987] CLJ (Rep) 1; [1987] 1 MLJ 345 at p. 347 where the appellant, as a director of the restaurant company, was found guilty of contempt for failing to ensure that the prohibitory order was complied with by the restaurant company. The court further held that it was not necessary to consider whether the director was also liable for aiding and abetting the disobedience of the order.

(ii) *Societe Jas Hennessy & Co & Anor v. Nguang Chan (M) Sdn Bhd* [2005] 5 CLJ 515; [2005] 4 MLJ 348 where the court held that the directors were in contempt for allowing the company to distribute the bottles of Hennessy VSOP cognac which failed to comply with the terms of the consent order.

(iii) *BYD Auto Industry Co Ltd v. Amdac (M) Sdn Bhd* [2017] 5 CLJ 371; [2017] 11 MLJ 513 where the director of the respondent company was found guilty of contempt for failing to ensure that the respondent company complies with the court's order requiring the respondent company to deposit of RM4.5 million into a joint account and to disclose by way of affidavit the full value of all assets owned by it within the requisite time.

(iv) *Bayu Gamitan Sdn Bhd v. Mah Siew Seng & Ors* [2000] 1 LNS 266; [2000] 4 AMR 4351 where the court rejected the argument that the second and third respondents were not active directors of the respondent's company and did not partake in the daily running of the company.

[61] This court finds the charge of contempt has been proven beyond a reasonable doubt against LCH, LCK, CCP and KKH (second to fifth alleged contemnors) in their capacity as directors/officers of NEP for failing to ensure that the inspection order is complied with by NEP. Each of them together with NEP are found guilty of contempt of court.

Sentencing

[62] Having so found NEP, LCH, LCK, CCP and KKH guilty of contempt of court, it falls on the court the unpleasant task of sentencing.

Contempt Not Purged

[63] Each of the contemnors averred that each of them is willing to give an unqualified apology to this court in the event this court finds that they did not comply with the terms of the inspection order and are prepared "to make all documents in their possession available to the audit team."

[64] There is no unconditional apology offered at the earliest opportunity. The contemnors have repeatedly asserted that they have complied with the inspection order and refused to admit the clear breaches of the express terms of paras. 1 and 2 of the inspection order.

[65] As such, I find the contemnors have not purged their contempt. As of the date of the decision, none of them have provided to the plaintiffs any of the documents stated in Annexure B, in breach of the express term of para. 2 of the inspection order and also did not comply with para. 1 of the inspection order.

[66] Upon this court making the above pronouncements, learned counsel, Mr Sng Eee Kim, for the contemnors, urged the matter be stood down to enable him to prepare a mitigation submission. During the short recess, one of the contemnors was unwell and was rushed to hospital.

[67] In the event, sentencing was then deferred to 24 August 2023.

[68] Meanwhile, the contemnors filed in the court their mitigation statement and apology.

[69] On 24 August 2023, learned counsel for the contemnors drew the attention of this court to the fact that there is also on foot minority oppression proceedings filed by the plaintiffs in another court.

[70] I am of the considered view that the oppression proceedings should not be supplant or conflated with the contempt proceedings here, and thus this court proceeded with sentencing.

[71] The court is guided by the sentencing principles set out in *Juris Technologies Sdn Bhd & Anor v. Foo Tiang Sin & Ors* [2019] 9 CLJ 617; [2019] 12 MLJ 785; at [25] and [26] and *Teoh Seow Chiew & Ors v. Mega Palm Sdn Bhd & Anor* [2021] 1 LNS 2400; [2021] MLJU 2683; [2021] AMEJ 2076 at para. 115, where Mohd Nazlan Ghazali J (now JCA) said that 'this court had a wide discretion to sentence a contemnor, and that the primary consideration ought to be the public interest'.

[72] After hearing submissions from learned counsel for the contemnors, in the public interest on the necessity of ensuring that the administration of justice shall not be obstructed or interfered with, I impose the following sentence against the contemnors:

(i) a fine of RM25,000 against each of the first to fifth contemnors to be paid individually;

(ii) the fine shall be paid within seven days of sentencing and upon such failure, there shall be an imprisonment in default of two weeks for each of the second to fifth contemnors;

(iii) the contemnors are to purge their contempt and comply with the inspection order dated 10 June 2022 within 21 days from 24 August 2023 and upon default, there shall be a fine of RM5,000 for each day of default; and

(iv) the court shall record a conviction for each of the contemnor's acts of contempt of court.

[73] In respect of costs of the contempt proceedings, this court has considered that as the plaintiffs have successfully proven the charge of contempt, costs in their favour as a successful party ought to be ordered, see O. 59 r. 3(1) and/or (2) of the ROC 2012 and O. 59 r. 16(2)(a) and (3) of the ROC 2012. Considering the criteria in O. 59 r. 16, *inter alia,* skill, specialised knowledge and responsibility required of the plaintiffs' solicitors and counsel; particularly when it is not a run-of-the-mill matter like sale of goods; that contempt indeed is a serious matter; the seniority and experience of the counsel for the plaintiffs; the time and labour expended; the number of documents prepared and perused; the importance to the first plaintiff's statutory rights to the accounting records under s. 245 of the CA 2016; the second plaintiff's contractual rights to the accounting records, the importance of committal proceedings to enforce the plaintiffs' rights and protecting the public interest of ensuring that the administration of justice shall not be obstructed; I am of the respectful view a reasonable sum of RM120,000 as costs subject to allocatur is fair and exercised my discretion to so order. Such costs are to be paid by the first to fifth contemnors jointly and/or severally within 14 days of service of order.

[74] It remains for me to record my gratitude to the counsel for their efforts expended in research which was of great assistance to the court. My not setting out every argument and authority submitted by the parties' respective counsel was not intended to deprecate their industry, but only because I found it unnecessary to do so in arriving at a decision.